HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

First Appeal No. 26 of 2006

RAJENDRA TAMRAKAR

Versus

SMT RANJANA TAMRAKAR

ORDER

Order for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

I agree

Sd/-
L.C.BHADOO
Judge

Post for Order: 25/10/2007

Sd/-

25/10/2007

(41)

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 26 of 2006

APPELLANT (NON-APPLICANT)	RAJENDRA TAMRAKAR, Aged About 50 Years, S/o Late Jhaulal Tamrakar, R/o-C/o Ramesh Sharma, Nehru Nagar, Raipur-Presently at Pendra Road, Distt. Bilaspur
	Versus
RESPONDENT (APPLICANT)	SMT RANJANA TAMRAKAR Aged About 45 Years, W/o Shri Rajendra Tamrakar, R/o Near Ravishankar Stadium, against Masjid, Kota, Raipur (C.G.)

(Appeal under Section 19 of the Family Courts Act, 1984)

Appearance:

Shri Sameer Sahu, counsel for the appellant.

Miss Sushma Chandel, counsel for the respondent.

(DIVISION BENCH)

HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

ORDER
(25.10.2007)

Following order of the Court was delivered by **Sunil Kumar Sinha, J,**

(1) M.(C.)P. No. 216 of 2006 has been filed for condonation of delay in filing the appeal.

(2) This appeal is directed against the judgment and decree dated 30.11.2005 passed by the Principal Judge, Family Court, Raipur in Case No. 49-A/2005, whereby, a decree of divorce has been passed in favour of wife (respondent herein).

(3) According to office report, the appeal is barred by 40 days of limitation.

(4) The brief facts are that the appellant was married to respondent on 11.12.1981. They were residing as husband and wife. The allegations are that after the marriage, the appellant started treating the respondent with cruelty as he never used to give money for her maintenance and for maintenance of her children and when the same was demanded, he used to beat her. The appellant was drunker and since he was doing nothing, he used to mortgage the house hold articles and he also used to sell them for the purpose of drinking. Looking to this attitude of appellant, they were removed from matrimonial house and they started living in a separate house along with three children. The respondent started tailoring work for the livelihood but the appellant used to snatch money earned from the said work also by abusing her and giving her beatings and in this way, he was causing physical and mental cruelty to the respondent. The further allegations are that looking to this attitude, the respondent came back to Raipur in her parents place and her parents managed for opening of a bicycle repairing shop but the appellant could not run the shop and ultimately the shop had to be closed. On petty reasons, the appellant started treating the respondent with cruelty and he most oftenly used to beat her, therefore, the respondent had to file the petition for divorce u/s 13 of Hindu Marriage Act. Prior to this petition, an earlier petition for divorce on mutual consent was also filed but ultimately the appellant withdrew his consent and that petition had to be withdrawn and this was the second occasion when an independent petition for divorce was filed.

(5) The appellant filed written statement before the Family Court and denied the contentions raised by the respondent.

(6) The Family Court framed issue on the point of treating the respondent with cruelty by the appellant and after taking evidence recorded a finding that in fact, the respondent was treated with cruelty by the appellant and she was entitled to a decree of divorce u/s 13 of the Hindu Marriage Act.

(7) So far as admission is concerned, learned counsel for the appellant argued that the Court below has erred in law in recording a finding of cruelty against the appellant, therefore, the decree passed against him deserves to the set aside. On limitation, he argued that on account of illness of the appellant, the appeal could not be filed in time and the delay in filing the appeal be condoned.

(8) A reply to the above application has been filed by the respondent opposing the same.

(9) After careful consideration of the points raised by the learned counsel for the appellant, we do not find any substance in this appeal. The finding, in relation to cruelty, recorded by the Family Court is based on cogent evidence on record. The evidence adduced in the matter has been discussed in detail by the Family Court for recording such finding vide Paras 7.1 to 7.6 of the judgment. The factum of cruelty has been proved by proving the instances pleaded by the respondent. After going through the judgment, we are satisfied that the finding is neither perverse nor erroneous.

(10) So far as condonation of delay in filing the appeal is concerned, the appellant has taken the plea of his illness. It has been stated vide Para- 2 of his application that he was suffering from jaundice and he remained under treatment from 25.12.2005 to 5.2.2006. A medical certificate (Annexure-A/3) has been filed in support of above contentions.

(11) A perusal of the medical certificate would show that the Doctor has certified that the appellant was suffering from

jaundice and was under his treatment since 25.12.2005 to 5.2.2006 but he has not certified that during this period, either he was bed ridden or he was unable to move and he was unable to undertake journey etc. Therefore, it is not established that in fact, the appellant was even unable to move in between the said period of treatment and for this reason, he could not file appeal in time. We do not consider the reason shown to be bonafide and sufficient for condonation of delay.

(12) For the foregoing reasons, M.(C.)P. No. 216 of 2006 (for condonation of delay) as also the appeal itself both are dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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